

Securities and Exchange Commission

§ 239.37

20–F (§ 249.220f of this chapter). The registration of securities to be offered or sold in a standby underwriting in the United States or similar arrangement is not permitted pursuant to this paragraph. See paragraphs (b) (1), (2) and (3) of this section.

[47 FR 54776, Dec. 6, 1982, as amended at 56 FR 30055, 30057, July 1, 1991; 58 FR 14681, Mar. 18, 1993; 59 FR 21652, Apr. 26, 1994; 62 FR 26388, May 14, 1997]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form F-3, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

§ 239.34 Form F-4, for registration of securities of foreign private issuers issued in certain business combination transactions.

This form may be used by any foreign private issuer, as defined in rule 405 (§ 230.405 of this chapter), for registration under the Securities Act of 1933 (“Securities Act”) of securities to be issued:

(a) In a transaction of the type specified in paragraph (a) of rule 145 (§ 230.145 of this chapter);

(b) In a merger in which the applicable law would not require the solicitation of the votes or consents of all of the securityholders of the company being acquired;

(c) In an exchange offer for securities of the issuer or another entity;

(d) In a public reoffering or resale of any such securities acquired pursuant to this registration statement; or

(e) In more than one of the kinds of transactions listed in paragraphs (a) through (d) registered on one registration statement.

[56 FR 30058, July 1, 1991]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form F-4, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

§ 239.35 [Reserved]

§ 239.36 Form F-6, for registration under the Securities Act of 1933 of depositary shares evidenced by American Depositary Receipts.

Form F-6 may be used for the registration under the Securities Act of 1933 (the *Securities Act*) of Depositary

shares evidenced by American Depositary Receipts (ADRs) issued by a depositary against the deposit of the securities of a foreign issuer (regardless of the physical location of the certificates) if the following conditions are met:

(a) The holder of the ADRs is entitled to withdraw the deposited securities at any time subject only to (1) temporary delays caused by closing transfer books of the depositary or the issuer of the deposited securities or the deposit of shares in connection with voting at a shareholders’ meeting, or the payment of dividends, (2) the payment of fees, taxes, and similar charges, and (3) compliance with any laws or governmental regulations relating to ADRs or to the withdrawal of deposited securities;

(b) The deposited securities are offered or sold in transactions registered under the Securities Act or in transactions that would be exempt therefrom if made in the United States; and

(c) As of the filing date of this registration statement, the issuer of the deposited securities is reporting pursuant to the periodic reporting requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934 or the deposited securities are exempt therefrom by Rule 12g3-2(b) (§ 240.12g3-2(b) of this chapter) unless the issuer of the deposited securities concurrently files a registration statement on another form for the deposited securities.

[48 FR 12348, Mar. 24, 1983]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting the General Instructions to Form F-6, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

§ 239.37 Form F-7, for registration under the Securities Act of 1933 of securities of certain Canadian issuers offered for cash upon the exercise of rights granted to existing securityholders.

(a) Form F-7 may be used for the registration under the Securities Act of 1933 (the “Securities Act”) of the registrant’s securities offered for cash upon the exercise of rights to purchase or subscribe for such securities that are granted to its existing securityholders in proportion to the

number of securities held by them as of the record date for the rights offer.

(b) Form F-7 is available to any registrant that:

(1) Is incorporated or organized under the laws of Canada or any Canadian province or territory;

(2) Is a foreign private issuer; and

(3) Has had a class of its securities listed on The Montreal Exchange, The Toronto Stock Exchange or the Senior Board of the Vancouver Stock Exchange for the 12 calendar months immediately preceding the filing of this Form, has been subject to the continuous disclosure requirements of any securities commission or equivalent regulatory authority in Canada for a period of at least 36 calendar months immediately preceding the filing of this Form, and is currently in compliance with obligations arising from such listing and reporting.

Instruction: For purposes of this Form, “foreign private issuer” shall be construed in accordance with Rule 405 under the Securities Act.

(c) If the registrant is a successor registrant subsisting after a statutory amalgamation, merger, arrangement or other reorganization requiring the vote of shareholders of the participating companies (a “business combination”), the registrant shall be deemed to meet the 36-month reporting requirement and the 12-month listing requirement of paragraph (b)(3) of this section if:

(1) The time the successor registrant has been subject to the continuous disclosure requirements of any securities commission or equivalent regulatory authority in Canada, when added separately to the time each predecessor had been subject to such requirements at the time of the business combination, in each case equals at least 36 calendar months, *provided, however*, that any predecessor need not be considered for purposes of the reporting history calculation if the reporting histories of predecessors whose assets and gross revenues, respectively, would contribute at least 80 percent of the total assets and gross revenues from continuing operations of the successor registrant, as measured based on pro forma combination of such participating companies’ most recently com-

pleted fiscal years immediately prior to the business combination, when combined with the reporting history of the successor registrant in each case satisfy such 36-month reporting requirement;

(2) The time the successor registrant has been subject to the listing requirements of the specified exchanges, when added separately to the time each predecessor had been subject to such requirements at the time of the business combination, in each case equals at least 12 calendar months, *provided, however*, that any predecessor need not be considered for purposes of the listing history calculation if the listing histories of predecessors whose assets and gross revenues, respectively, would contribute at least 80 percent of the total assets and gross revenues from continuing operations of the successor registrant, as measured based on pro forma combination of such participating companies’ most recently completed fiscal years immediately prior to the business combination, when combined with the listing history of the successor registrant in each case satisfy such 12-month listing requirement; and

(3) The successor registrant has been subject to such continuous disclosure requirements and listing requirements since the business combination, and is currently in compliance with its obligations thereunder.

(d) The rights in connection with the transaction granted to securityholders that are U.S. holders shall be granted upon terms and conditions not less favorable than those extended to any other holder of the same class of securities. The securities offered or sold upon exercise of rights granted to U.S. holders may not be registered on this Form if such rights are transferable other than in accordance with Regulation S under the Securities Act.

Instruction: For purposes of this Form, the term “U.S. holder” shall mean any person whose address appears on the records of the registrant, any voting trustee, any depository, any share transfer agent or any person acting on behalf of the registrant as being located in the United States.

(e) This Form shall not be used if the registrant is an investment company registered or required to be registered

Securities and Exchange Commission

§ 239.38

under the Investment Company Act of 1940.

(f) Any non-U.S. person acting as trustee with respect to the securities being registered shall file a Form F-X (§239.42 of this chapter) with the Commission at the time of filing this Form.

[56 FR 30060, July 1, 1991]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form F-7, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

§ 239.38 Form F-8, for registration under the Securities Act of 1933 of securities of certain Canadian issuers to be issued in exchange offers or a business combination.

(a) Form F-8 may be used for registration under the Securities Act of 1933 ("Securities Act") of securities to be issued in an exchange offer or in connection with a statutory amalgamation, merger, arrangement or other reorganization requiring the vote of shareholders of the participating companies (a "business combination"). Securities may be registered on this Form whether they constitute the sole consideration for such exchange offer or business combination, or are offered in conjunction with cash.

(b) This Form shall not be used for registration of securities if no takeover bid circular or issuer bid circular (in the case of an exchange offer) or information circular (in the case of a business combination) is prepared pursuant to the requirements of any Canadian jurisdiction due to the availability of an exemption from such requirements.

(c) This Form may not be used for registration of derivative securities except:

(1) Warrants, options and rights, provided that such securities and the underlying securities to which they relate are issued by the registrant, its parent or an affiliate of either; and

(2) Convertible securities, provided that such securities are convertible only into securities of the registrant, its parent or an affiliate of either.

Instruction: For purposes of this Form, an "affiliate" of a person is anyone who beneficially owns, directly or indirectly, or exercises control or direction over, more than 10 percent of the outstanding equity shares of

such person. The determination of a person's affiliates shall be made as of the end of such person's most recently completed fiscal year.

(d) In the case of an exchange offer, Form F-8 is available to any registrant that:

(1) Is incorporated or organized under the laws of Canada, or any Canadian province or territory;

(2) Is a foreign private issuer;

(3) Has had a class of its securities listed on The Montreal Exchange, The Toronto Stock Exchange or the Senior Board of the Vancouver Stock Exchange for the 12 calendar months immediately preceding the filing of this Form, has been subject to the continuous disclosure requirements of any securities commission or equivalent regulatory authority in Canada for a period of at least 36 calendar months immediately preceding the filing of this Form, and is currently in compliance with obligations arising from such listing and reporting; and

(4) Has an aggregate market value of the public float of its outstanding equity shares of (CN) \$75 million or more; *provided, however*, that such public float requirement need not be satisfied if the issuer of the securities to be exchanged is also the registrant on this Form.

Instructions: 1. For purposes of this Form, "foreign private issuer" shall be construed in accordance with rule 405 under the Securities Act.

2. For purposes of this Form, "equity shares" shall mean common shares, non-voting equity shares and subordinate or restricted voting equity shares, but shall not include preferred shares.

3. For purposes of this Form, the "public float" of specified securities shall mean only such securities held by persons other than affiliates of the issuer.

4. For purposes of this Form, the market value of the public float of outstanding equity shares shall be computed by use of the price at which such shares were last sold, or the average of the bid and asked prices of such shares, in the principal market for such shares as of a date within 60 days prior to the date of filing. If there is no market for any of such securities, the book value of such securities computed as of the latest practicable date prior to the filing of this Form shall be used for purposes of calculating the market value, unless the issuer of such securities is in bankruptcy or receivership or has an accumulated capital deficit, in which case one-third of the principal amount, par value